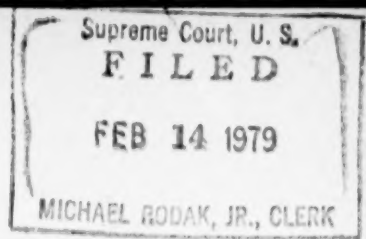


No. 78-913



In the Supreme Court of the United States

OCTOBER TERM, 1978

JAMES BEIL AND DANIEL BONNETTS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

JOSEPH S. DAVIES, JR.

WILLIAM C. BROWN

Attorneys

Department of Justice

Washington, D.C. 20530

INDEX

	Page
Opinion below	1
Jurisdiction	1
Statutes involved	2
Questions presented	2
Statement	3
Argument	4
Conclusion	10

CITATIONS

Cases:

<i>Bibbins v. United States</i> , 400 F.2d 544....	7
<i>Blumenthal v. United States</i> , 332 U.S. 539	7, 9
<i>Burks v. United States</i> , No. 76-6528 (June 14, 1978)	6
<i>Glasser v. United States</i> , 315 U.S. 60.....	6
<i>Hernandez v. United States</i> , 300 F.2d 114	8
<i>McManaman v. United States</i> , 327 F.2d 21, cert. denied, 377 U.S. 945	7-8
<i>Overton v. United States</i> , 405 F.2d 168....	7
<i>Pilgrim v. United States</i> , 266 F.2d 486....	7
<i>Pinkerton v. United States</i> , 328 U.S. 640..	7
<i>United States v. Berlin</i> , 472 F.2d 13	8
<i>United States v. Fairfield</i> , 526 F.2d 8.....	5
<i>United States v. Feola</i> , 420 U.S. 671.....	4
<i>United States v. Johnson</i> , 514 F.2d 431....	5
<i>United States v. Mayes</i> , 512 F.2d 637, cert. denied, 422 U.S. 1008	7
<i>United States v. Muncy</i> , 526 F.2d 1261....	5

II

Cases—Continued	Page
<i>United States v. Newson</i> , 531 F.2d 979....	5
<i>United States v. Squires</i> , 581 F.2d 408....	5
<i>United States v. Viruet</i> , 539 F.2d 295.....	5
<i>United States v. Zarattini</i> , 552 F.2d 753, cert. denied, 431 U.S. 942	5
Statutes and regulations:	
18 U.S.C. 371	3
18 U.S.C. 659	5
18 U.S.C. 2312	3, 5
18 U.S.C. 2313	3
18 U.S.C. 2314	5
18 U.S.C. 2315	5

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-913

JAMES BEIL AND DANIEL BONNETTS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-19) is reported at 577 F.2d 1313.

JURISDICTION

The judgment of the court of appeals was entered on August 11, 1978. A petition for rehearing was denied on November 8, 1978 (Pet. App. 20-21). The

(1)

petition for a writ of certiorari was filed on December 7, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

18 U.S.C. 2312 provides:

Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

18 U.S.C. 2313 provides:

Whoever receives, conceals, stores, barter, sells, or disposes of any motor vehicle or aircraft, moving as, or which is part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

QUESTIONS PRESENTED

1. Whether, in a prosecution for conspiracy to transport stolen motor vehicles in interstate commerce in violation of the Dyer Act, the government must prove that petitioners had knowledge of the interstate nature of the transportation.

2. Whether the evidence was sufficient to support petitioners' convictions.

STATEMENT

Following a bench trial on stipulated facts in the United States District Court for the Middle District of Georgia, petitioners were convicted of conspiracy to violate the Dyer Act, in violation of 18 U.S.C. 371, 2312 and 2313. Both petitioners were sentenced to a term of three years' imprisonment. The court of appeals affirmed, with one judge dissenting (Pet. App. 1-19).

The stipulated facts (Pet. App. 9-11) showed that in July 1974 petitioner Bonnetts stole a 1974 Ford Thunderbird in Worth, Illinois, and sold it to co-conspirator Charles Jordan. Jordan transported the automobile to Columbus, Georgia, and thereafter returned it to Illinois where he resold it to Nicholas Katinas. In August 1974 petitioner Bonnetts stole a 1974 Lincoln Continental in Schaumburg, Illinois, and again sold the automobile to Jordan. Jordan paid \$600 for the automobile, drove it to Columbus, Georgia, and then brought it back to Illinois where he resold it to Katinas. In February 1975, petitioner stole another 1974 Lincoln Continental in Chicago, Illinois, and again sold the automobile to Jordan.

In September 1973, petitioner Beil stole a 1973 Ford Thunderbird in Chicago, Illinois. He sold the car to Jordan, who transported it to Columbus, Georgia, where it was resold. In July 1975, petitioner Beil stole a 1975 Cadillac Eldorado in Chicago, Illinois. He once again sold the automobile to Jordan, who transported it to Columbus, Georgia.

Petitioners were aware when they sold each of the automobiles that Jordan, acting in concert with others, was planning to dispose of the automobiles either by sale or by stripping the cars for spare parts. However, petitioners did not know at the time they sold the automobiles to Jordan that he would remove them from Illinois (Pet. App. 10-11).

ARGUMENT

1. Petitioners contend that the evidence was insufficient to support their convictions for conspiring to transport stolen motor vehicles in interstate commerce because it was stipulated that they had no knowledge of the federal jurisdictional element, namely, that the vehicles that they sold to Jordan would be transported across a state line.

The answer to this contention is found in *United States v. Feola*, 420 U.S. 671 (1975), which holds that "where knowledge of the facts giving rise to federal jurisdiction is not necessary for conviction of a substantive offense * * * such knowledge is equally irrelevant to questions of responsibility for conspiracy to commit that offense" (*id.* at 696). The Court recognized in *Feola* that knowledge that a "planned joint venture violates federal as well as state law [is] totally irrelevant to that purpose of conspiracy law which seeks to protect society from the dangers of concerted criminal activity" (*id.* at 693). Since *Feola*, the courts of appeals have uniformly applied this principle to reject claims that knowledge of interstate transportation is required in prosecutions for

conspiracy to commit offenses that include that jurisdictional element. See *United States v. Fairfield*, 526 F. 2d 8, 11 (8th Cir. 1975) (conspiracy to violate 18 U.S.C. 2312); *United States v. Viruet*, 539 F.2d 295, 297 (2d Cir. 1976) (conspiracy to violate 18 U.S.C. 659); *United States v. Zarattini*, 552 F.2d 753, 760 (7th Cir.), cert. denied, 431 U.S. 942 (1977) (same); *United States v. Squires*, 581 F. 2d 408, 409-410 (4th Cir. 1978) (conspiracy to violate 18 U.S.C. 2314); *United States v. Newson*, 531 F. 2d 979, 981, 982 (10th Cir. 1976) (same); *United States v. Johnson*, 514 F. 2d 431, 432 (3d Cir. 1975) (same); *United States v. Muncy*, 526 F. 2d 1261, 1264 (5th Cir. 1976) (conspiracy to violate 18 U.S.C. 2315).

As this Court noted in *Feola*, there are two instances when the knowledge of the parties to an agreement is relevant in a conspiracy prosecution. "First, the knowledge of the parties is relevant to the same issues and to the same extent as it may be for conviction of the substantive offense" (420 U.S. at 695). The substantive Dyer Act offense involved here only required that petitioners have knowledge that the vehicles were stolen. As the court of appeals pointed out, "[i]n this respect the government's task was not difficult; both [petitioners] knew that the automobiles sold to Jordan were stolen because they themselves were the admitted thieves" (Pet. App. 4). Second, where the conspiratorial agreement is unfulfilled the knowledge and intent of the conspirators may be relevant in establishing the existence of federal ju-

risdiction (420 U.S. at 695-696).¹ But no such issue is presented in this case because the agreement was carried out and "[f]ederal jurisdiction always exists where the substantive offense is committed * * *" (*id.* at 695).

The underlying substantive offense involved in this case is knowing transportation of stolen motor vehicles in interstate commerce. While knowledge that the transported vehicles were stolen is necessary to establish guilt on a substantive Dyer Act charge,² knowledge of the interstate nature of the transporta-

¹ The Court noted in *Feola* that where the "object of an intended attack is not identified with sufficient specificity so as to give rise to the conclusion that had the attack been carried out the victim would have been a federal officer, it is impossible to assert that the mere act of agreement to assault poses a sufficient threat to the federal personnel and functions so as to give rise to federal jurisdiction" (420 U.S. at 695-696).

² In his dissenting opinion in the court below (Pet. App. 12-19), Judge Coleman asserts that petitioners could not be guilty of conspiring to violate the Dyer Act because there was no proof that the person who transported the automobiles, Charles Jordan, knew that they were stolen. Even assuming that such proof is required to support petitioners' conspiracy conviction, that proof was present here. Jordan received five relatively new luxury cars from petitioners, who admittedly stole them. In one instance, he paid only \$600 for a Lincoln Continental. His plan in disposing of the cars was to use them for spare parts if they could not be resold. He was required to travel from Illinois to Georgia to dispose of several of the cars. New luxury cars in good working order are not sold for small amounts of money, or used for spare parts, unless they are stolen. Viewed in the light most favorable to the government (*Burks v. United States*, No. 76-6528 (June 14, 1978), slip op. 15-16, *Glasser v. United States*, 315 U.S. 60, 80 (1942)), the evidence clearly supported the inference that Jordan was aware that the automobiles were stolen.

tion is not. See *Overton v. United States*, 405 F. 2d 168, 169 (5th Cir. 1968); *Bibbins v. United States*, 400 F. 2d 544, 545-546 (9th Cir. 1968); see also *Pilgrim v. United States*, 266 F. 2d 486, 488 (5th Cir. 1959). After *Feola*, knowledge of interstate transportation is equally irrelevant in the present prosecution for conspiracy.

Finally, although it was stipulated that petitioners had no knowledge that Jordan would remove the stolen automobiles from Illinois, it is well settled that the liability of a conspirator may be based on the acts of co-conspirators in furtherance of the conspiracy even if the conspirator is unaware of the performance of those acts. As the district court found, petitioners' repeated sales of stolen cars to Jordan, with knowledge that "Jordan, acting in concert with others, was planning to dispose of the said automobiles either by sale or by selling said automobiles as spare parts" (Pet. App. 10), clearly evidenced a conspiracy to steal and dispose of the automobiles. Jordan's subsequent transportation and sale of the cars was in furtherance of that scheme. In these circumstances, petitioners' liability may derive from the acts of their co-conspirator in transporting the stolen cars across state lines even though petitioners had no prior knowledge of those acts. See *Blumenthal v. United States*, 332 U.S. 539, 557, 559 (1947); *Pinkerton v. United States*, 328 U.S. 640, 646-647 (1946). See also *United States v. Mayes*, 512 F. 2d 637, 642 (6th Cir.), cert. denied, 422 U.S. 1008 (1975); *McManaman v. United States*, 327 F. 2d 21,

25 (10th Cir.), cert. denied, 377 U.S. 945 (1964); *Hernandez v. United States*, 300 F. 2d 114, 122 (9th Cir. 1962).

Accordingly, the court below correctly held that petitioners' knowledge of the interstate transportation of the stolen automobiles was irrelevant to the conspiracy charged in this case.³

2. Petitioners also contend that the evidence was insufficient on the ground that their arrangement with Jordan only involved isolated sales of stolen automobiles and that "after the sale was completed

³ Relying on Judge Coleman's dissenting opinion, petitioners claim (Pet. 13-14) that the court of appeals' holding subjects a "local car thief" to federal prosecution under the Dyer Act if the stolen vehicle subsequently moves in interstate commerce "even years later, despite the fact that the local thief [has] completely terminated his relationship to the vehicle" and has no knowledge of the interstate movement. This is incorrect. It is true that knowledge that the stolen automobile has travelled in interstate commerce is irrelevant under the Dyer Act, but it must still be shown that the defendant caused the interstate transportation of the stolen car, either personally or (as here) by imputation through the actions of a conspirator. Hence, a "local car thief" is subject to federal prosecution only if (as here) he joins in a conspiracy that in fact extends beyond mere local car theft into the subsequent transportation of the vehicle in interstate commerce. Car theft, followed by "interstate transportation by an innocent purchaser" (*United States v. Berlin*, 472 F. 2d 13, 14 (9th Cir. 1973)), would not violate the Dyer Act. If petitioners had themselves driven the stolen automobiles to Georgia for resale, their violation of the Dyer Act would be apparent; under settled principles of conspiracy law, the situation is no different because Jordan transported the automobiles in furtherance of the conspiracy.

* * * the arrangement between petitioners and the buyer terminated" (Pet. 9). The substance of this claim is that petitioners' criminal agreement did not extend to Jordan's transportation of the stolen automobiles, whether it was intrastate or interstate.

Viewed in the light most favorable to the government, the record refutes this contention. As noted above, while the government stipulated that petitioners had no specific knowledge of the planned interstate movement of the vehicles at the time of sale, it was not stipulated that petitioners were unaware of the scheme to dispose of the cars. To the contrary, it was expressly stipulated that petitioners had knowledge when they sold each of the automobiles that Jordan, acting in concert with others, was planning to resell the automobiles or strip them for parts (Pet. App. 10). Thus, petitioners realized that their repeated sales of stolen luxury cars to Jordan were part of a concerted scheme to recirculate the cars. Petitioners were more than "local car thieves." They were the first link in an organized ring, involving numerous participants, that stole cars and took the necessary steps to dispose of them commercially. In light of this evidence, the court below properly found that petitioners were involved in a conspiracy to steal, transport, and ultimately dispose of stolen automobiles (Pet. App. 7). See, e.g., *Blumenthal v. United States*, *supra*, 332 U.S. at 559. This factual determination does not warrant further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

JOSEPH S. DAVIES, JR.
WILLIAM C. BROWN
Attorneys

FEBRUARY 1979